

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Monroe D. Kiar, Town Attorney  
(954) 584-9770

**SUBJECT:** Ordinance Amending Code of Ordinances Relevant to Vested Rights  
Determination

**TITLE OF AGENDA ITEM:** An Ordinance of the Town of Davie, Florida, Amending the Code of Ordinances of the Town of Davie, Deleting Current Division 4 of Section 12 of the Land Development Code entitled “Administrative Appeals Procedure”, and Creating a New Division 4 of Section 12 of the Land Development Code Entitled “Vested Rights Determination”; Providing for Inclusion in the Town Code; Providing for Severability and Providing for an Effective Date.

**REPORT IN BRIEF:** The Town Council directed the Town Attorney’s Office to prepare an amendment to the Land Development Code to provide for a specific procedure for making vested rights determinations. The proposed Ordinance also grants ultimate decision making authority of any vested right appeal of the Town Attorney’s determination with the Town Council rather than the Town Administrator.

**PREVIOUS ACTIONS:** N/A

**CONCURRENCES:** N/A

**FISCAL IMPACT:** The Town will receive an application fee of \$1,500.00.

**ACCOUNT NAME:** N/A

**RECOMMENDATIONS:** Motion to approve the Ordinance

**ATTACHMENTS:** Ordinance

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF DAVIE, DELETING CURRENT DIVISION 4 OF SECTION 12 OF THE LAND DEVELOPMENT CODE ENTITLED "ADMINISTRATIVE APPEALS PROCEDURE", AND CREATING A NEW DIVISION 4 OF SECTION 12 OF THE LAND DEVELOPMENT CODE ENTITLED "VESTED RIGHTS DETERMINATION"; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie, Florida, finds and determines it is in the best interests of the Town of Davie that there be a an amendment to the Land Development Code to provide for a specific procedure for making vested rights determinations;

WHEREAS, the Town Council of the Town of Davie desires to amend the Land Development Code to delete the current Division 4 of Section 12 of the Land Development Code entitled "Administrative Appeals Procedure" and create a new Division 4 of Section 12 of the Land Development Code entitled "Vested Rights Determination" which establishes procedure for vested rights procedure; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. Division 4 of Section 12 of the Land Development Code is deleted.

SECTION 2. A new Division 4 of Section 12 of the Land Development Code is hereby added:

DIVISION 4. VESTED RIGHTS DETERMINATION

Sec. 12-400. Purpose.

The purpose of this division is to set forth the procedure for a vested rights determination. The term "vested rights" encompasses both a claim for vested rights and a claim of equitable estoppel.

Sec. 12-401. Procedure for Vested Rights Determination.

A) A request for a vested rights determination shall be made by the applicant in a letter to the Town Attorney, with a copy of the letter simultaneously sent to the

Town Administrator, the Development Services Director, the Mayor and each Councilmember.

- B) Accompanying the copy of the letter to the Town Administrator shall be a fee of \$1,500.00 by the applicant to the Town of Davie to cover the cost to the Town for making the vested rights determination.
- C) The letter requesting a vested rights determination shall state with specificity each and every reason and each and every fact upon which the applicant is relying in order to support its claim for a vested right, and the specific vested right that the applicant desires. The applicant shall also enclose with the letter, and all copies of the letter, all evidence and proof which it is relying upon to support its claim for vested rights.
- D) The Town Attorney shall review the letter and the evidence and proof submitted. The Town Attorney shall be entitled to request all additional information that he/she believes is helpful to him/her and/or Staff in making the vested right determination. Such additional information requested can include, but is not limited to, the following: questions to the applicant and officers, directors, shareholders, employees, agents and experts of the applicant, documents from the applicant and officers, directors, shareholders, employees, agents and experts of the applicant, Affidavits from the applicant and officers, directors, shareholders, employees, agents and experts of the applicant, taking sworn statements from the applicant and officers, directors, shareholders, employees, agents, and experts of the applicant and in meeting with the applicant or officers, directors, shareholders, employees, agents or experts of the applicant. In making the vested rights determination, the applicant or the applicant's officers, directors, shareholders, employees, agents and experts failure to provide what is requested from the Town Attorney may be considered negatively toward the applicant's request for a vested rights determination or in a supplemental vested rights determination.

- E) The Town Attorney, once the information has been provided and once he/she is of the opinion that the vested rights determination can be given, shall provide a vested rights determination in writing. The applicant is limited to the information which has been provided. The applicant cannot provide new information without first requesting permission from the Town Attorney to do so.
- F) The written vested rights determination or supplemental vested rights determination of the Town Attorney shall be either faxed or mailed certified mail to either the applicant, its attorney or its agent.
- G) The vested rights determination or supplemental vested rights determination remains final and binding upon the applicant unless the applicant appeals the Town Attorney's determination within twenty days of the date of the Town Attorney's determination. In the event that the applicant fails to timely appeal the vested rights determination or, in the event of a supplemental vested rights determination fails to appeal the supplemental vested rights determination, of the Town Attorney, it is conclusively presumed that the Town Attorney's determination is final. In the event that the applicant desires to challenge the vested rights determination or supplemental vested rights determination of the Town Attorney, the applicant must deliver to the Town Administrator by 4:00 PM within twenty days of the date of the Town Attorney's determination a Notice of Appeal of the Town Attorney's determination (if the twentieth day is on a Saturday, Sunday or legal holiday in which the Town Administrator's office is closed, then the appeal may be timely delivered on the immediate next day that the Town Administrator's office is open). The Notice of Appeal shall be strictly limited to advising of the desire to appeal and the relief that the applicant is requesting. No further statements or argument are permitted in the Notice of Appeal.

- H) The Town Administrator shall place this appeal on the agenda of a Town Council meeting on such date that the Town Administrator considers appropriate.
- I) The Town Council shall consider the appeal at the Town Council meeting when the appeal is on the agenda, but the Town Council is permitted to table the appeal to such time as the Town Council considers appropriate. The Town Council is also empowered to request that the Town Attorney obtain additional information from the applicant and officers, directors, shareholders, employees, agents and experts of the applicant. The Town Council is also entitled, should it so chose, to obtain input from the public concerning the vested rights determination. The applicant is not entitled to speak during the appeal unless the Town Council permits the public to speak or unless the Town Council permits the applicant to speak. In the event that the Town Council requests or solicits additional information, the matter shall be sent back to the Town Attorney for a supplemental vested rights determination in light of the additional information requested or given. When that supplemental vested rights determination is provided by the Town Attorney, he/she shall provide notice as described in subsection (F), and that supplemental vested rights determination shall be described as indicated in subsection (G), and in the event of an appeal of that supplemental vested rights determination it shall be placed on the agenda as described in subsection (H), and shall be treated by the Town Council as described in subsection (I)
- J) When the Town Council makes its determination on the appeal, the appeal shall be based on the information in the record, which information is the information provided by the applicant, the information provided by Staff, the information provided from all other sources which are in the record, and information provided by the Town Attorney. In making the vested rights determination or supplemental vested rights determination, the applicant or the applicant's officers, directors, shareholders, employees, agents and experts

failure to provide what is requested from the Town Attorney or the Town Council may be considered negatively toward the applicant in its request for a determination. The determination of the Town Council in the appeal is final.

K) The applicant has not exhausted its administrative remedies until such time as it has complied with this procedure.

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION 5. This ordinance shall take effect immediately upon its passage and adoption. For any pending vested rights determination in which the Town Attorney's Office has not given a final opinion, this procedure shall also be applicable.

PASSED ON FIRST READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

PASSED ON SECOND READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

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MAYOR/COUNCIL MEMBER

ATTEST:

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TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.